



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

NYPL RESEARCH LIBRARIES



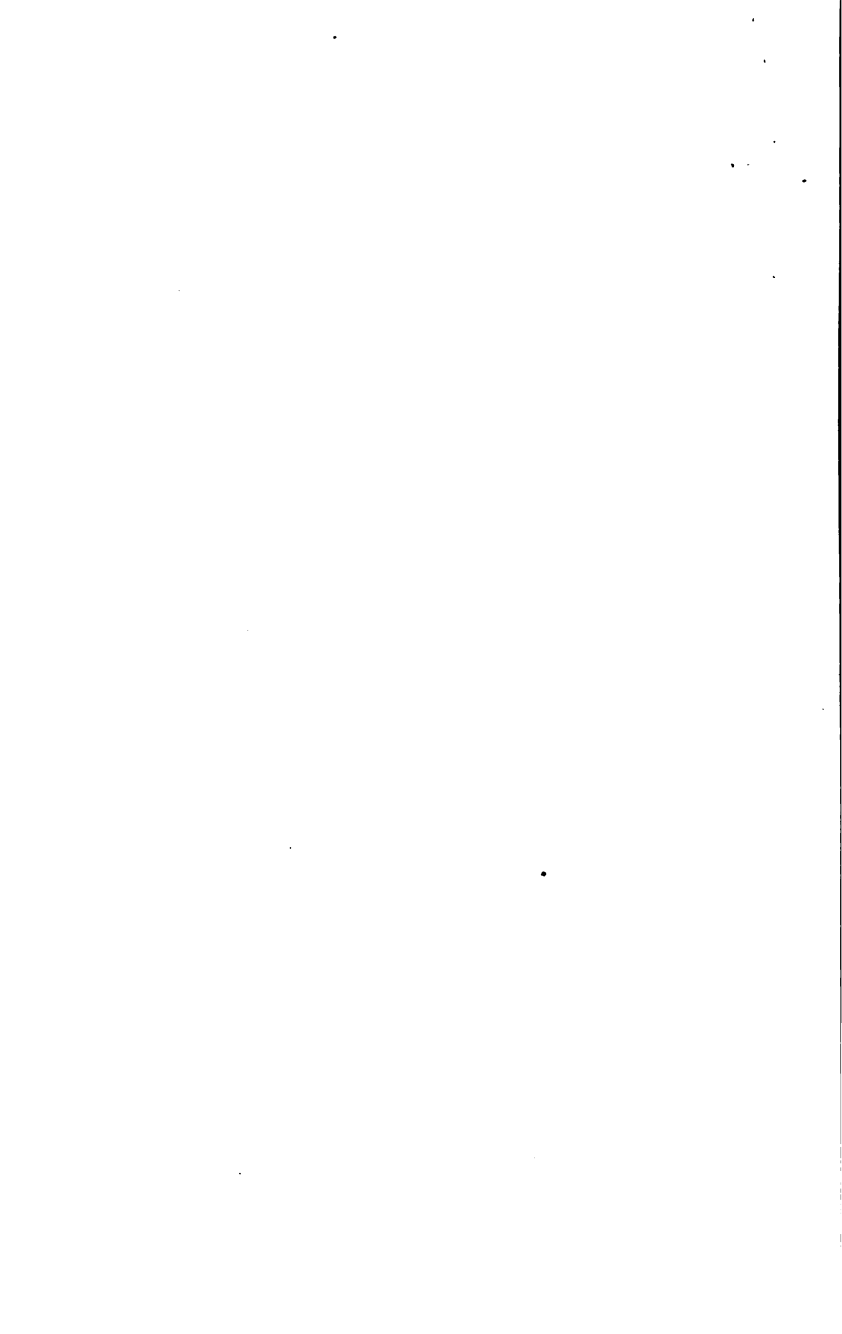
3 3433 08179150 5



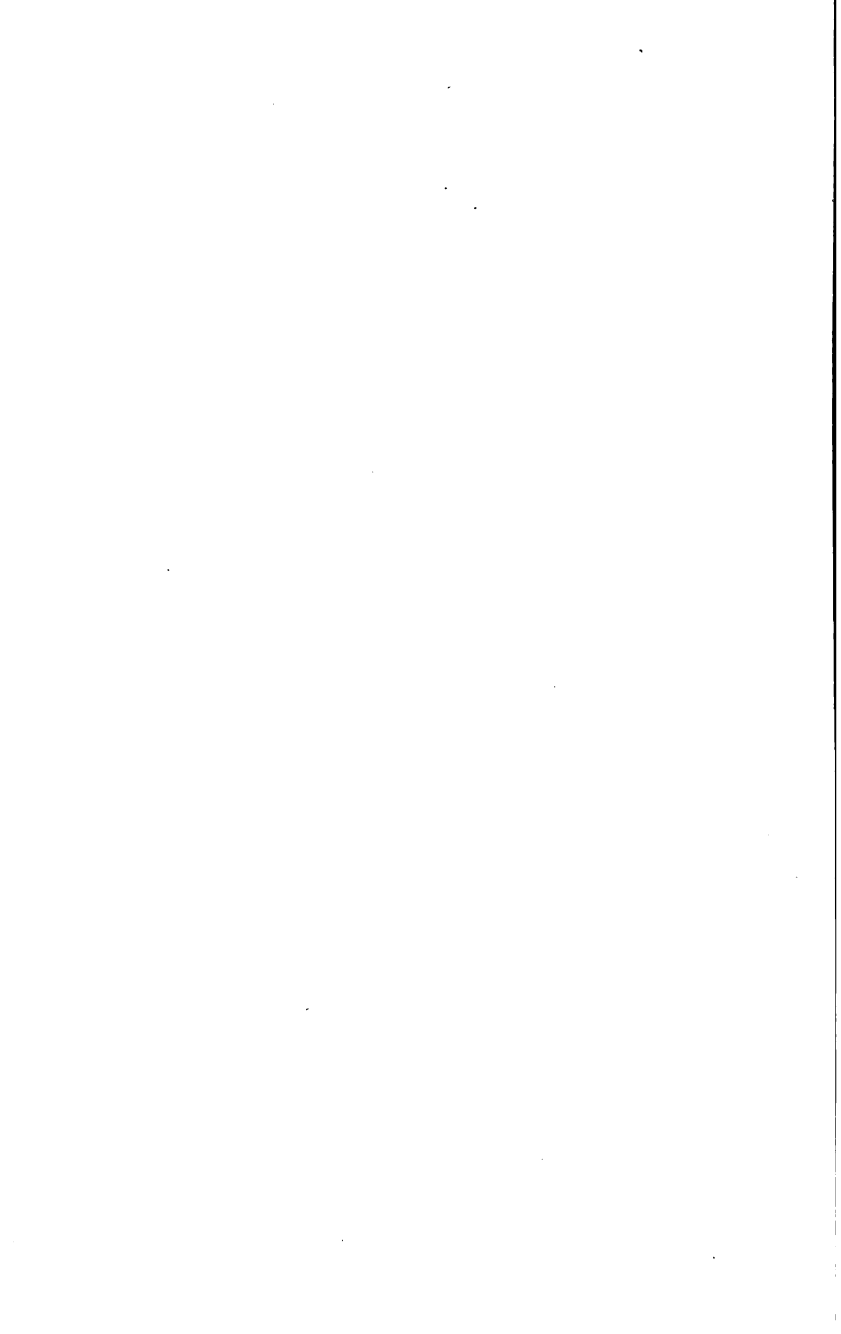








THE BENCH AND BAR.



Not
11/9/35

THE BENCH AND BAR

AS MAKERS OF THE

AMERICAN REPUBLIC

BY

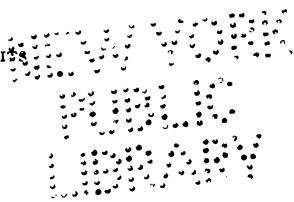
HON. W. W. GOODRICH

+

PRESIDING JUSTICE, SUPREME COURT, APPELLATE DIVISION, STATE
OF NEW YORK

AN ADDRESS DELIVERED FORE-FATHERS' DAY, 1900; CELEBRATING
THE 280TH ANNIVERSARY OF THE LANDING OF
THE PILGRIMS

WITH PORTRAITS



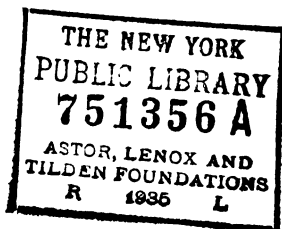
NEW YORK

E. B. TREAT & COMPANY

241-243 WEST 23D STREET

1901
1911

C



Copyright 1901



E. B. Treat & Co.

NOV 1901
LIBRARY
NEW YORK

THE BENCH AND BAR.

INTRODUCTORY.

IN discussing my subject I propose to refer briefly to the history of nations in order to indicate the influence which fundamental law necessarily has upon the permanence of nations. I shall argue that, to ensure permanence, a nation must be founded upon justice to the individual, liberty to every citizen and obedience to the law of God; and I shall indicate the part which Bench and Bar have taken in the formation and development of our national institutions.

2481

Centuries measure the lives of nations, as years measure the lives of men, and we must search the centuries to ascertain the conditions which have contributed to the downfall of nations no longer existent. It may be said of these ancient nations, and it is sufficient for my purpose to say, that they perished from the face of the earth because they failed to recognize the one true God, to obey his

law and to establish justice and liberty for the individual citizen.

The Bible, most venerable of historical books, purports to speak of human history for only forty centuries before Christ, yet the recent discovery by Professor Hilprecht, of tablets with cunieform characters, in the library of an ancient temple in Asia Minor, made six thousand years before Christ, demonstrates that long before that time there had been a flourishing civilization which had founded great States, had built great palaces and temples and cities now covered by the sands of the desert. Of the rise and fall of these States we have no record.

History discloses the fact that nations always have a period of growth, a period of war and conquest, a period of luxury and effeminacy and a period of decadence. These periods have followed in unvarying sequence with all the ancient nations of the world.

Neither good laws nor religion alone have been sufficient for permanence. Ancient empires had the former but did not endure. The Jewish Nation, which began its real national life 1491 B. C., when Moses led it from Egypt into Palestine, was founded

on morality and religion. It had a pure theocracy and a priesthood to administer its laws but the personal majesty of the citizen was of small importance in the administration of affairs. This nation gave to the world the greatest codes of law ever promulgated, the law of Moses and the law of Christ, but it fell and was scattered to the ends of the earth, because it broke the law of Moses and rejected the law of Christ; yet, scattered as its people have been, they retain their national characteristics, because they have maintained the law and tradition of their ancestors through the centuries which have followed their expulsion from Jerusalem.

While I may not claim that Moses was a lawyer by profession, I have often thought that he was one, in all but the name. Possibly he was not a lawyer, because, so far as the record shows, there was no court to admit him to practice. Perhaps it was such a case as we find in that brief but famous chapter in the history of Ireland, entitled "On Snakes in Ireland," where immediately after the caption it was said: "There are no snakes in Ireland." Certainly he had the qualifications and the knowledge of law which go to make, and which would have made him, a great lawyer. The deca-

logue announced through him has been the basis of all subsequent law.

It will not serve my purpose to trace the history of ancient Babylon, Assyria and Egypt. With all their power and genius, wealth and luxury, their inhabitants were idolators. They had little regard for justice, while the liberty of the individual was a thing unknown. They, too, ceased to exist, and the monuments of their civilization are buried in the sands of the desert.

Greece, which prospered from 1100 B. C. till it was conquered by the Romans in the second century of the Christian era, and Rome, which flourished from 700 B. C. till the fifth century, A. D., when it was overcome by the Vandals, were polytheistic nations. Their governments were aristocracies, in which the freedom and rights of the common people had no place. Yet it may be said of both Greece and Rome that the laws which their great lawgivers promulgated have exercised an imperishable influence upon civilization. I need refer only to Solon of Athens, Pheidon of Corinth, Charendas of Katena, as examples of lawmakers in Greece, and to Justinian and Cicero of Rome. These nations fell into ruin, but the laws which

they created still survive, and from them in large measure Europe derived her civilization.

This brief reference to the dominant empires of the ancient world is sufficient to show that nations exist only so long as they enact just laws and obey them; that they hasten to their fall when law, the freedom of the individual and his right to part and parcel in the government are disregarded.

After the dismemberment of the Roman Empire, Europe sank into the superstition and supineness of the Dark Ages, from which it slowly emerged with the Reformation and the discovery of printing. As these spread intelligence and a truer religion, the modern nations of Europe began their real march of progress. With them came better laws, and more liberty to the common people, although they came as the slow growth of centuries.

In English History especially is this manifest. The liberty of the nation began when the barons wrested Magna Charta from King John, in 1215. That was in fact an establishment of law. From that time onward, the nation struggled through civil and religious strifes, but always improving her laws, more nearly to conform to the eternal principles of liberty, justice and equity, until she erected

a system of jurisprudence never before equalled, and only dreamed of by Socrates and Plato. Obedience to God's law and the right of each citizen to personal liberty and participation in governmental affairs became the basic principle of government. Upon her system of just laws her greatness will endure so long as it is followed and preserved.

The seed of the Reformation found congenial and fertile soil in England. It produced a just regard for the rights of the common people, the equality of all men before the law, liberty of conscience, and the right of each man to worship God according to the dictates of his own conscience. But this end was not attained without agony and blood. The Pilgrim found to his sorrow that in large degree he was trammelled and persecuted by the Established Church. He fled to Holland, and finally, in the *Mayflower*, to the desolate shores of New England, but he brought with him Magna Charta, the Declaration of Rights and the undying love of personal liberty.

During the thirty years following the Pilgrim and Puritan exodus, which ended with the execution of Charles I., more than twenty-five thousand colonists fled to New England, but with the cessa-

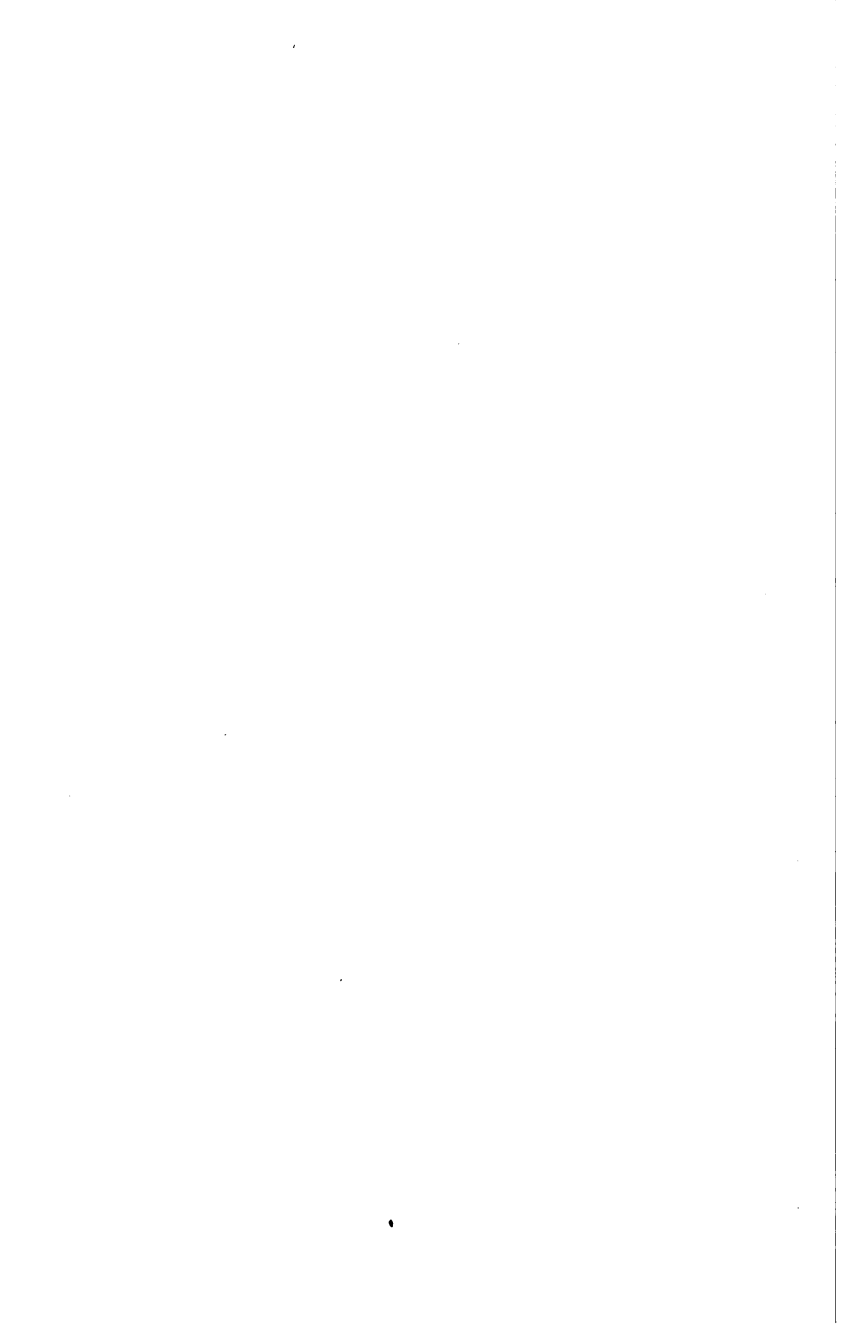
tion of religious persecution in England upon the establishment of the Protectorate, emigration practically ceased.

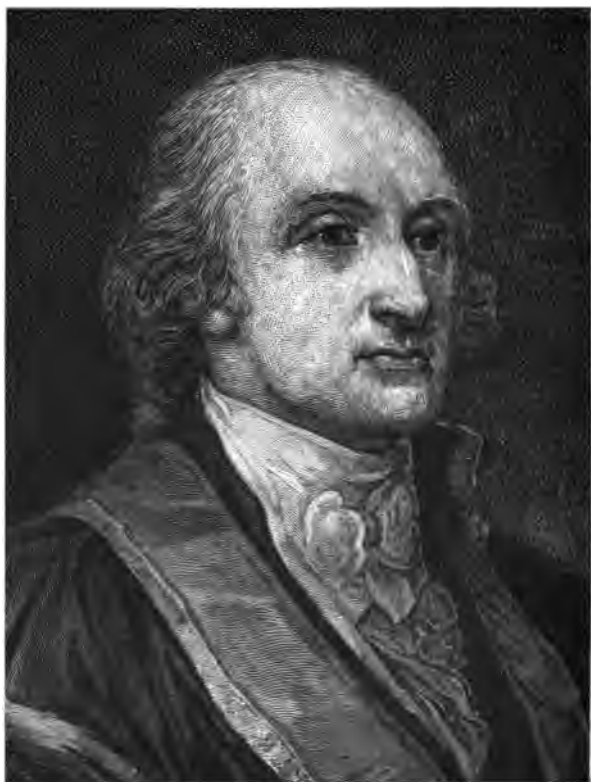
Meanwhile, the Jamestown Colony, begun in 1607, was also building its temple of liberty. Other colonies were laying their foundations along the Atlantic coast. In all these structures, the corner stone was civil and religious liberty and obedience to the law of God. By a slow and tedious process of evolution there was gradually developed in all the colonies an abiding belief in human freedom, and the power of asserting and maintaining national independence. All nations before our own had been governed by monarchs or aristocracies, because the idea of the personal liberty of the individual had not been their dominant principle. It was only when this idea had taken deep root in the minds of our forefathers, that free America came into being, with power at once to maintain itself and its ideas. Then, for the first time in human history, a nation was born, founded on civil and religious liberty and equal rights to all men before the law. Other peoples, spurred by our example and success, have grown into this faith, but the thought was conceived and matured in America.

Let us see now what part the Bench and Bar have taken, and what influence they have exercised in the formation of the American Republic.

Our history is manifestly divisible into four periods—the *Colonial* period ending with the close of the Revolution, the *Constitutional* period ending with the adoption of the Federal Constitution, the *Formative* period ending with the Civil War, and the *National* period, now in progress.

THE COLONIAL PERIOD.





JOHN JAY

FIRST CHIEF JUSTICE OF THE UNITED STATES

Born 1745—Died 1829

THE COLONIAL PERIOD.

As to the early part of the Colonial period, I must frankly admit that our Pilgrim fathers barely tolerated lawyers, regarding them as a necessary evil to be carefully circumscribed. Perhaps they had the prejudice which exists in the uneducated mind of to-day, well illustrated in the remark of an Irishman who saw a tombstone with the inscription, "Here lies the body of John Robinson, a lawyer and an honest man," and reflectively observed: "A lawyer and an honest man. I wonder what the two of them is doing in the one grave." Perhaps they remembered the objurgation, "Wo unto you lawyers!" which had been sounding down the centuries of the Christian era. Yet, there were among the early colonists at least three who had been educated for the bar, Winthrop, Bellingham and Humphrey, and possibly two others, Bradstreet and Pelham, all influential in the moulding of Colonial affairs.

In the latter part of the Colonial period, however, we find that the New England lawyers were arousing and guiding public sentiment toward the independence of the colonies. Among them were John Adams, Robert Treat Paine, Thomas Cushing, Joseph Hawley, Josiah Quincy and James Otis. In Virginia there were Thomas Jefferson, James Madison, Richard Henry Lee and Patrick Henry. Otis, in 1761, and Henry, in 1763, in legal arguments on writs of encroachments, laid open the design of England to subjugate the colonies and make them forever dependent. There is little doubt that the work of these great lawyers influenced and confirmed the colonies in their determination to free themselves from England and her injustice.

In 1774, Massachusetts issued a call to the other colonies for the first Continental Congress, which met in Philadelphia in September. It formed what has been termed the Revolutionary Government, which endured until superseded by the Confederate Government, in 1781.

More than one-half of the delegates to this congress were lawyers, prominent among whom were John Adams and Thomas Cushing, of Massachusetts, Stephen Hopkins of Rhode Island, Roger

Sherman of Connecticut, James Duane (first mayor of New York City), John Jay and Henry Wisner (the only New York delegate voting for the Declaration of Independence) of New York, Samuel Chase of Maryland, Patrick Henry and Randolph Peyton of Virginia, Richard Caswell of North Carolina and Edward Rutledge of South Carolina.

John Adams drew the famous Fourth Article of the Declaration of Rights, passed by this Congress, and commencing:

"The foundation of English liberty and of all free governments, is the right to participate in their legislative council, and as the English Colonists are not represented, and from the local and other circumstances, cannot be properly represented in the British Parliament, they are entitled to a free and exclusive power of legislation in the several provincial legislatures." This was the precursor of the Declaration of Independence.

The second Continental Congress, which assembled at Philadelphia, in May, 1775, authorized the raising of a continental army and appointed Washington commander-in-chief. Most of the delegates to the first Congress were returned to this, and more than two-thirds of the delegates of the second

Congress were lawyers. Among the new members appear the following lawyers: Josiah Bartlett of New Hampshire, Robert Livingston of New York, who with the assistance of Monroe afterward negotiated the purchase of Louisiana; Thomas Johnson of Maryland, Thomas Jefferson and George Wythe of Virginia, and Archibald Bullock of Georgia. The only minister in this Congress was the Reverend John J. Zubly, a prominent Presbyterian and delegate from Georgia. It must be saddening to my clerical friends to know that he was disloyal to the American cause and was denounced as a traitor on the floor of Congress by Judge Chase of Maryland, who called him a Judas.

This Congress, on July 4, 1776, gave to the world the Declaration of Independence. It was a new and startling statement of the right of the people to self-government, and came upon the world like a thunderbolt from clear skies. The principle had been foreshadowed by Diderot, Voltaire, Montesquieu and Rousseau, in France, and in the establishment of the Protectorate of Cromwell in England; but its crystallization in a written instrument as the basic principle of government was novel and surprising. In France it was followed, whether as a

necessary consequence or not I do not undertake to determine, by the Revolution of 1789; and in England, by the extension of the suffrage and practically by a republic governed by Parliament. Of the fifty-five signers of that immortal document, thirty-two were lawyers, of whom twenty-two were, or afterward became, judges. Prominent among them were Edward Rutledge of South Carolina, Richard Henry Lee and Thomas Jefferson of Virginia, John Adams and Robert Treat Paine of Massachusetts, and Roger Sherman of Connecticut. I might say, in passing, that there was but one clergyman, John Witherspoon of New Jersey. Of the committee of five, to draft the Declaration, three were lawyers, John Adams, Thomas Jefferson and Roger Sherman.

It is hardly possible for us in these quiet times of peace and prosperity to conceive the danger attending so positive an act of rebellion against the parent government as that would have been if the Revolution had not succeeded. Every signer put his life, liberty and fortune in the balance, where failure meant ruin and death. Yet more than two-thirds of those brave and patriotic men were lawyers. Of such men the poet sings:

"Then to side with Truth is noble when we share her
wretched crust,
Ere her cause brings fame and profit, and 'tis prosperous
to be just:
Then it is the brave man chooses, while the ~~coward~~ ^{coward} stands
aside,
Doubting in his abject spirit, till his Lord is crucified;
And the multitude make virtue of the faith they had
denied."

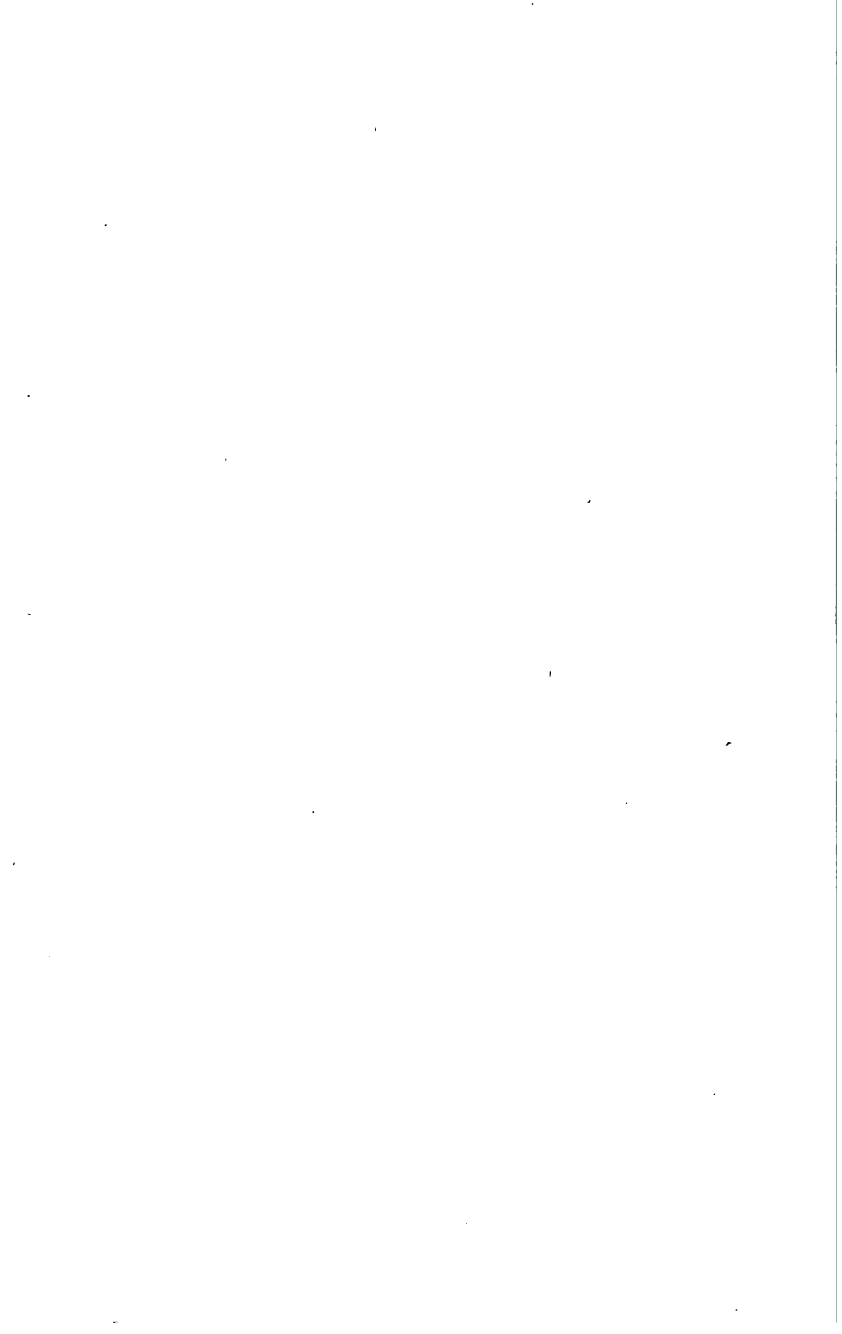
The history of the Revolutionary War is not essential to my theme. There were lawyers in command and in private service. Among the former was Alexander Hamilton, probably the most influential of the great lawyers of the Constitutional period. He was on the staff of Washington; and when after his presidency Washington was appointed lieutenant-general, he consented to accept the position only on the condition that Hamilton should be appointed major-general, next to himself, chief in command of the army. He was one of the founders of the Manumission Society of the last century, the chief object of which was the abolition of slavery. He was a promoter and one of the most active members of the Constitutional Convention. Constructive statesmanship seemed to be the master passion of his life. His voice and influence more than those of any other man induced

the convention to introduce into the Constitution its federal strength. He helped to build on broad lines the authority of the Constitution. He was the chief contributor to *The Federalist*, which has always been standard authority on the plan of the constitution. He became secretary of the treasury in the cabinet of Washington and largely shaped by heroic measures the financial affairs of the country throughout the troublesome times which existed during Washington's term of office. So efficient was his work that Webster said of him: "He smote the rock of the national resources and abundant streams of revenue gushed forth. He touched the dead corpse of public credit and it sprung upon its feet." It has been claimed that he wrote Washington's farewell address. His early death in 1804, at the age of forty-seven, in a duel with Aaron Burr, ended a brilliant career and plunged the whole nation into mourning.

It now becomes necessary to remember the condition in which the struggling but triumphant confederation found itself at the end of the war. The colonies deemed themselves, and in fact were, sovereign and independent of each other. Each had ideas and tendencies peculiarly its own. I need only

to suggest Massachusetts with its Pilgrim and Puritan settlement, Maryland with its Catholic settlement, Virginia with its Cavalier settlement and South Carolina with its Huguenot settlement, in order to recall the difficulties of the situation. While in a loose and feeble way they had united in the War of the Revolution, the colonies were still a band of independent States, bound together by no other ties than those of self protection and common interests; and while for a decade there was a shadowy bond of union between them, they were always drawing farther apart, each jealous of its own sovereignty and primacy and of the rank and prominence of all the others, and all alike absolutely opposed to anything like federal power and control. There was a congress which legislated, but it had no power to enforce its own edicts. The national finances, always the nerve of national life, were in such disorder that the government had credit neither at home nor abroad, and it was almost impossible to raise funds for its current business. The paper currency was valueless. Industry was paralyzed. Riot and crime stalked hand in hand through the land. The Colonial period ended in national disorder, gloom and despondency.

THE CONSTITUTIONAL PERIOD.





THOMAS JEFFERSON
THIRD PRESIDENT OF THE UNITED STATES
Born 1743—Died 1826

THE CONSTITUTIONAL PERIOD.

Such was the condition of affairs when the Constitutional period commenced. While not of long duration, it was of vast importance in the formation of the republic, and the most important epoch of our history, for in it a new nation was created on an absolutely new foundation. Rufus Choate once said: "I dwell on that time, from 1780 to 1789, because that was an age of civil greatness. Then first we grew to be one. In that time our nation was born. That which went before made us independent. Our better liberty, our law, our order, our Union, our credit, our commerce, our rank among nations, our page in the great history, we owe to this. Independence was the work of the higher passions. The Constitution was the slow product of wisdom."

Steps were taken in 1786 toward the calling of a convention for the framing of a Constitution. Months elapsed before it could be convened, and

even then, some of the colonies refused full participation. In May, 1787, after repeated failures, the convention met at Independence Hall, in Philadelphia, to adopt a Constitution for the United States. Washington, who was chosen its president, said in his opening address: "It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair. The event is in the hand of God."

The proceedings of the Convention, which lasted five months, were in secret for the stated reason that while there might be differences of opinion on many subjects it was desirable that the complete work should be submitted in its entirety to the people; and it was not until the death of ex-President Madison, the last survivor of the members, that his journal of the proceedings was published.

The membership and influence of lawyers in that fateful Convention were of vast importance. Of the fifty-five members thirty-five were lawyers, of whom nineteen then were, or afterward became, judges. Prominent among these lawyers was Alexander

Hamilton, the friend and right arm of Washington, and subsequently his secretary of the treasury. I need only to mention the names of Roger Sherman, Oliver Ellsworth, Jonathan Dayton, Gouverneur Morris, Rufus King, James Madison, Charles C. Pinckney and Edmund Randolph.

On September 17, 1787, after a long and heated session and many differences of opinion, the convention adopted the Constitution and submitted it to the States for ratification. It was to take effect when ratified by nine States, and the ninth ratified it on March 4, 1789, when the United States of America" became a sovereign power.

The establishment of the United States as a nation was unique in the history of the world. Other nations have grown from barbarism to civilization by process of national evolution. But our nation may be said to have been born in a day. True, it felt the influence of European civilization, but it was set apart in a new continent. True, it was established by emigrants from many nations, but the touch of the Western hemisphere seems to have created new thoughts, new ideas, new action. In later years, when our form of government had proved a success, similar federations occurred in Europe, as in Ger-

many after the French War, and in Italy after it was aroused by Garibaldi. It may be said that both these nations learned a lesson from our example and exemplified the adage, "Imitation is the sincerest flattery."

To recall briefly the peculiarity of our Constitution, let me remind you that it provides for an executive, a legislature and a judicial branch, each supreme in its own domain. In its own province the Supreme Court is independent, and in its exposition of the Constitution is final and supreme. The independence of the judiciary is one of the essential features of the Constitution and has had vast influence in the development of our national integrity and permanence.

Montesquieu said: "There is no liberty if the judiciary power be not separated from the legislative and executive powers."

Burke declared: "Whatever is supreme in a State ought to have as much as possible its judicial power so constituted as not only to depend upon, but in some sort to balance it. It ought to give security to his justice, against its power."

Mr. Gladstone said that "as the British Constitution is the most subtle organism which has pro-

ceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

John Fiske calls it: "The Iliad, the Parthenon or the fifth symphony of Beethoven * * * two complete and well-rounded systems of law, the State law and the Federal law, each with its legislative, its executive and its judiciary, moving one within the other, noiselessly and without friction. It was one of the longest reaches of constructive statesmanship ever known in the world."



THE FORMATIVE PERIOD.





JOHN MARSHALL
FOURTH CHIEF JUSTICE OF THE UNITED STATES
Born 1755—Died 1835

THE FORMATIVE PERIOD.

This brings us to the formative period of our country, which commenced with the adoption of the Constitution and ended with the Civil War. Here the influence of Bench and Bar has been paramount. This period witnessed the real building of the nation on the foundation of the Constitution. At first the Constitution was an experiment. True, by its terms it bound the States together in one nation, but its meaning was not clearly defined or understood. There still were discordant elements. On the one side, it was claimed that the sovereignty of the States was unimpaired; that the nation was a mere compact or league of States from which any one of them might withdraw at its own volition. On the other hand, it was contended that the Constitution created a new sovereignty, supreme in all that had been committed to it by the express language of the Constitution, and that no State could withdraw the power over itself which by its ratifica-

tion had been conferred upon the nation. It is easy *now*, to see that our very existence as a nation, or the breaking of the Union into weak and warring States depended upon the decision of this momentous question. These subjects gave rise to constant irritation during the first half of the nineteenth century.

We are all familiar with the struggle over the attempted extension of slavery into the Territories, and the great debate between Douglas and Lincoln, in which Lincoln asserted that irrespective of constitutional authority, or of public policy, the higher question of human right and wrong was involved in the slavery controversy, and on this great moral question obtained a majority of the popular vote which ought to have secured his election to the Senate. He was defeated only through the apportionment of legislative districts. This remarkable contest made the declaration, "No extension of human slavery," the principal plank of the Republican platform in 1860, upon which Lincoln was elected President. The right of a State to secede from the Union occupied the attention of Congress and the public for many years. The question culminated in and was effectively decided by the Civil War.

Prominent among the men who argued for the integrity of the Union and against nullification and the right of a State to secede was Daniel Webster, the greatest of all constitutional lawyers and debaters, and pre-eminently the apostle of nationality. His orations became the theme of the fireside and the hustings, of the press and the pulpit, and created public sentiment for nationality. They were declaimed by the school boy, who early in life drew from them an inspiration of patriotism which made his maturer years of service to his country. His argument was not for the creation of a nation but was the exposition as an existent fact of a nation created by and based upon the Constitution. In that position he never faltered. Who can forget the thrilling words which closed his reply to Hayne, "Liberty and Union, now and forever, one and inseparable!" which became the watchwords of the nation? Webster in Congress and in public debates was what, as we shall presently see, Chief Justice Marshall was in the Supreme Court, the exponent of nationality.

The work of the formative period has been largely manifested in the decisions of the Supreme Court of the United States and of the other Federal courts,

as well as in those of the courts of the several States. Between the Federal and the State courts there has been singularly little difference of opinion. They have alike interpreted the Constitution in such a way that the march of the nation has been a continual triumph at home and abroad.

The Supreme Court of the United States, in the last analysis, is the keystone of our national edifice. It is in the government what the balance wheel is in machinery. It was neither an imitation of nor an evolution from any tribunal previously existing. It was an absolute invention of the convention. For the first time in national history a court was created whose function it was to pass upon all other branches of the government, the Constitutions of the States and even the Federal Constitution itself. This court has been called "the crowning marvel of the wonders wrought by the statesmanship of America, embodying the loftiest ideas of moral and legal power." "Its judges are the high priests of justice. * * * No institution of human contrivance presents so many features calculated to inspire awe and veneration." "It is a tribunal of which the ancient world could present no model, and the modern world boast no parallel, whose de-

crees, woven like threads of gold into the priceless and imperishable fabric of our constitutional jurisprudence, would bind in the bonds of love, liberty and law the members of a great republic."

Mr. Fiske says:

"But for this system of United States courts extended throughout the States and supreme within its own sphere, the Federal Constitution could never have been put into practical, working order. In another respect the Federal judiciary was the most remarkable and original of all the creations of that wonderful convention. It was charged with the duty of interpreting, in accordance with the general principles of common law, the Federal Constitution itself. This is the most noble as it is the most distinctive feature in the government of the United States. It constitutes a difference between the American and British systems more fundamental than the separation of the executive from the legislative department. In Great Britain the unwritten constitution is administered by the omnipotent House of Commons; whatever statute is enacted by Parliament must stand until some future Parliament may see fit to repeal it. But an act passed by both houses of Congress, and signed by the Presi-

dent, may still be set aside as unconstitutional by the Supreme Court of the United States in its judgments upon individual cases brought before it. It was thus that the practical working of our Federal Constitution during the first thirty years of the nineteenth century was swayed to so great an extent by the profound and luminous decisions of Chief Justice Marshall, that he must be assigned a foremost place among the founders of our Federal Union. This intrusting to the judiciary the whole interpretation of the fundamental instrument of government is the most peculiarly American feature of the work done by the convention, and to the stability of such a federation as ours, covering, as it does, the greater part of a huge continent, it was absolutely indispensable."

The dominance of the Supreme Court in national affairs justifies allusion to some of its distinguished members. The chief justices have been John Jay, John Rutledge, Oliver Ellsworth, John Marshall, Roger B. Taney, Salmon P. Chase, Morrison R. Waite and Melville W. Fuller. John Jay, the first chief justice, was a member of the Congress of 1774, and, though almost the youngest member, he was selected to draft the famous "Address to the

People of Great Britain." He was a member of the Congresses of 1775 and 1776, but was not a signer of the Declaration of Independence, because he was absent on other official duties. At the close of the Revolutionary War he was one of the commissioners for negotiating the treaty of peace with Great Britain which bears his name. He became chief justice in 1789, and was governor of the State of New York from 1795 to 1801. It was of him that Webster said: "When the judicial ermine fell on his shoulders it touched nothing less spotless than itself."

John Marshall, the fourth chief justice, was the most eminent and influential of all. Shortly after the battle of Lexington, when nineteen years of age, he joined a military company which elected him lieutenant and afterward captain. The men wore the famous words of Patrick Henry, "Liberty or death," embroidered on their uniforms. With the company he took part in the famous battles of Germantown, Brandywine and Monmouth, and endured the terrible hardships of Valley Forge. It is said that once when travelling on military duty, he applied for lodgings at a hotel and that the future chief justice was refused accommodation on account

of his poverty and rags. He was a member of the Virginia House of Delegates for many years and a member of the Council of State. In 1788, he was a member of the Virginia Convention which ratified the Federal Constitution, and was one of the foremost advocates of its adoption, taking high rank as a debater. After its adoption he was its earnest friend. In 1798, he was one of the envoys to negotiate a treaty with France. Washington offered him the place of attorney general in his cabinet, but Marshall declined. President Adams offered him a seat in the United States Supreme Court, but this honor also he refused. He was a member of Congress in 1799. In 1800 Adams appointed him secretary of war, but before entering that office he was made secretary of state, and in 1801 he was appointed chief justice. He wrote a life of Washington and a history of the American Colonies.

Marshall was chief justice for thirty-four years and did more than any other man to establish the foundations and limits of our government, then in its infancy. He had no precedents to which he could refer, as all the ground was new; yet he evolved as from his inner consciousness the breadth and scope of constitutional authority and its limi-

tation. His first famous decision declared that the Supreme Court had the right and power to pronounce an act of Congress null and void if, in its opinion, such an act was in violation of the Constitution. Until then there was a popular delusion that there was no limit to legislative power; that the two houses of Congress, as the representatives of the people, could declare the people's will on any subject to any degree, and were responsible only to the members of the commonwealth; but Judge Marshall denied this prerogative, and held that the Supreme Court was greater than Congress, and under the Constitution the highest final authority of the government.

Professor Bryce says of Marshall: "The Constitution seemed not so much to rise under his hands to its full stature, as to be gradually unveiled by him till it stood revealed in the harmonious perfection of the form which its framers had designed. That admirable flexibility and capacity for growth which characterize it beyond all other rigid or supreme constitutions, is largely due to him."

Warren Olney said: "Instead of the Constitution being a rope of sand, as most men at first believed, or an infringement on the liberties of the people, as

represented by the States, as many thought, Marshall showed, by lucid reasoning and by the authority of this great judicial tribunal, that the Constitution was a ligament binding us together as a common whole, but yet preserving to the States individual freedom in all local and personal affairs. Changing the simile, we may say in the language of President Garfield: "Marshall found the Constitution paper, and he made it power; he found it a skeleton and clothed it with flesh and blood."

It would serve no useful purpose to state particular points of Judge Marshall's opinions. It is enough to say as their authoritative result, that he found a band of loosely connected States and that he left a strong nation. The centenary of his appointment as chief justice is to be observed in 1901, when a grateful nation will honor his memory.

Turning now to the executive branch of our government, we find that of the twenty-four presidents, nineteen have been lawyers, the laymen being Washington, Wm. H. Harrison, Taylor, Johnson and Grant. The first lawyer president was John Adams, who had largely affected pre-revolutionary public sentiment in Massachusetts upon the question of our independence. He was a member of the

second Continental Congress and one of the signers of the Declaration of Independence.

Jefferson was a member of the same Congress and drafted and signed the Declaration. He was also one of the commissioners to negotiate the treaty with Great Britain. He was the father of true modern Democracy.

Madison, who before he became the executive was secretary of state under Jefferson, was a member of the Constitutional Convention. He took so important a share in that body that he was familiarly known as the father of the Constitution.

Monroe will always be remembered as the author of the doctrine that bears his name, almost the first assertive act of our government upon questions other than those of domestic policy.

John Quincy Adams was a member of the Constitutional Convention.

Jackson gave up the profession to become a soldier and the hero of the battle of New Orleans.

I have not time to do more than mention the names of the other lawyer presidents whose lives are within the memory of many of my audience, Van Buren, Tyler, Polk, Fillmore, Pierce, Bu-

chanan, Hayes, Garfield, Arthur, Cleveland, Harrison and McKinley.

Greatest of all since Washington, was Abraham Lincoln, whose name we speak with tender and reverent affection, whom the world will always remember as the indomitable leader of our nation in its great struggle for union and liberty, himself the consummate flower of liberty, the liberator of millions of slaves, the man from whose head fell the victor's chaplet to be replaced by the martyr's crown.

"The kindly-earnest, brave, foreseeing man,
Sagacious, patient, dreading praise, not blame,
New birth of our new soil, the first American."

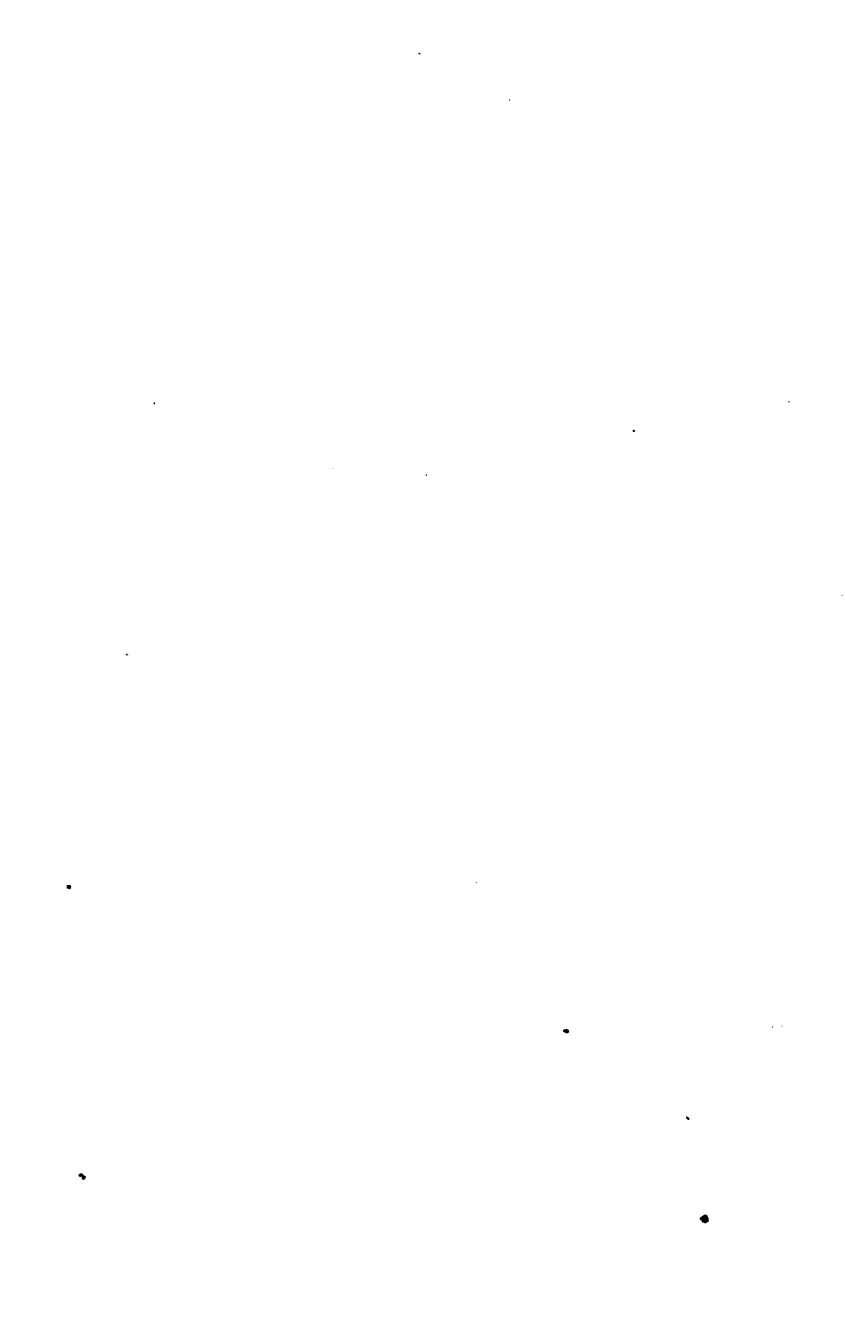
Was there ever such a galaxy of apostles of freedom as my legal brethren, with, thank God, but one exception, who from Washington to McKinley have occupied the presidential chair? How vast their influence in the formation of the Republic! May it not be said that to their labors and influence more than to those of any other class or profession the Nation owes its creation and continuance?

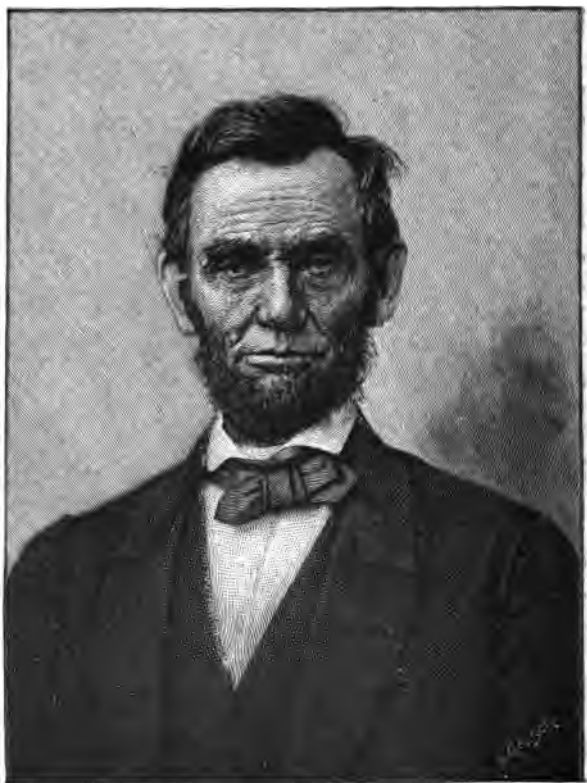
The cabinets of the presidents necessarily have large influence in the guidance of national affairs. That of Washington was composed of four members, three of whom were lawyers, among them

Jefferson and Hamilton. From time to time the cabinet has been increased so that at the present time it consists of eight members. With the exception of Jefferson's cabinet, in which only two of the five members were lawyers, the majority of every cabinet has been composed of lawyers; and in the cabinets of Monroe, John Quincy Adams, Jackson, Harrison, Tyler, Polk, Fillmore, Buchanan, Lincoln, Johnson, Grant, Arthur, and Cleveland at times every member was a lawyer.

Among the great cabinet officers have been Jefferson, Hamilton, Marshall, Monroe, Adams, Calhoun, Clay, Webster, Taney, Seward, Evarts, Chase and Stanton, without the mention of whose names our history would be incomplete. In recent years three lawyer secretaries of the navy, Whitney, Tracy and Long, conceived and constructed the White Squadron, which has carried our flag in triumph to Southern seas, added new territory to our dominion and renewed the luster of our navy's ancient renown.

THE NATIONAL PERIOD.





ABRAHAM LINCOLN
SIXTEENTH PRESIDENT OF THE UNITED STATES
Born 1809—Died 1865

THE NATIONAL PERIOD.

The National period, upon which we entered at the close of the Civil War, has been fruitful in results which no one could have anticipated as likely to occur during the nineteenth century. In this period the great questions of reconstruction and of equal rights without regard to race, color or previous condition of servitude have been firmly established by amendments to the Constitution. Our population has grown from thirty millions to seventy-six millions. We have fought the altruistic fight for our Cuban neighbor in her struggle for independence of Spanish tyranny, and are now protecting her in establishing her new government. We have taken our proper rank among the nations of the earth, who must hereafter reckon with us upon all international questions affecting the progress of humanity.

In all the great work of this important period my legal brethren have continued to be in evidence. As presidents, cabinet officers, legislators, governors.

judges and lawyers, in court and camp, in convention and congress, they have been moulding public opinion. They have become soldiers and have aided in the acquisition and defense of new territory and have been selected as governors and commissioners to arrange for the government of our new provinces. In every public position the profession has been fully represented. Indeed, the people seem to think that it is not possible to conduct public affairs without their assistance. This result is largely owing to the fact that bench and bar have always been watchful of the characters of their members. When judges have been unjustly attacked the bar has risen for their defense; when judges have become corrupt the bar has instituted proceedings against them. Yet only three United States judges have been impeached. In this State, there has been only one successful impeachment of a Supreme Court judge, that of Barnard in 1874. Proceedings were commenced at about the same time against Judge Cardozo, who resigned office to avoid conviction. These proceedings were instituted by lawyers, notwithstanding the great danger of revengeful action upon themselves and their clients, involved in an unsuccessful prosecution.

No careful student of history can fail to be impressed by the influence which the legal profession has exerted upon civilization and progress in all nations and in all ages, and especially in our own country during the closing century.

Nor is this fact a cause of wonder. The State is founded upon law. The lawyer from study and experience knows, or ought to know, what laws are best adapted to changing conditions, for as conditions change, the laws necessarily change with them. In our democratic land he naturally gravitates to public affairs. Like the minister, he is an oracle of village life, and in cities he is accustomed to deal with civic questions. He has always been what the liberal training of his profession makes him, a champion of freedom and a leader of human thought and progress. The world has made vast advance in all matters of legislation and law, justice and liberty during the present century, and the lawyer has always been in the forefront of the struggle.

Since the birth of the Republic, every national Congress has been very largely composed of lawyers. I need only to refer as a living example to the present Congress, consisting of four hundred and forty-seven members, of whom three hundred

and twelve are lawyers, while, so far as I have been able to ascertain, there is only one clergyman in the Senate and one in the House of Representatives, and each of these has increased his knowledge by the study or the practice of law.

There have been also many great lawyers and judges who have not been prominently connected with political affairs, whose influence has been pre-eminent in the formation of our institutions upon permanent foundations. Among these the world recognizes the names of Story, Kent, Wheaton, Rufus Choate, O'Connor and Parsons.

It seems germane to my subject to speak of one of the greatest dangers to the continuance of our modern civilization, against which the publicist must guard. I refer to the troubles which arise out of labor agitations. Working men have begun to feel their power in political affairs as never before. They have become a new power with which all governments must reckon. The masses are seething with unrest and yearning for part and parcel in government. They are groping in the discontent of socialism and anarchy, not knowing fully their own desires and intent, though determined to make their influence felt for the betterment of their condition.

I stood once at the summit of Vesuvius. Italy lay peacefully at its foot. The sun was shining with unclouded brilliancy upon the most beautiful bay and landscape in the world. Creeping cautiously through the masses of cinders to the edge of the crater, I looked down upon that sea of molten horror, tossing in fiery waves hundreds of feet below. The smoke rose in sulphurous, fetid, horrid fumes. Suddenly, as if gripped by some mighty convulsion, the volcano belched high into air great masses of burning cinder; we fled in peril of our lives. Here, I thought, is the physical picture of society as it exists in these latest years. Smooth upon the surface as the smiling Bay of Naples and the sunny plains of Italy, there are elements of unbridled passions, of communism and anarchy, which need only a torch to kindle another bloody revolution like that of France in 1789, the Lord Gordon riots of 1780, the negro riots in New York in 1863, or the assassination of president, czar and king within our own memory.

But after all, the danger is more fancied than real, for the American workingman is essentially a law-abiding citizen and respects the law, and by the very fact of his participation in its creation feels

himself to be a member of the body politic. He will be taught by education and convinced by experience that his individual welfare is consistent with and dependent upon the general good.

As we stand to-night in the closing hours of the closing year of the closing century that has seen such vast and progressive development, we ask ourselves whether our civilization and national institutions will be permanent.

It needs no prophetic vision to foresee our immediate future. For two centuries our feeble colonies barely fringed the Atlantic shore, their very existence hanging in the balance. Then, under the inspiration of freedom, at the beginning of the nineteenth century, the new nation began its magnificent march of settlement, westward over the blue ridges of the Alleghanies, westward over the valley of the Mississippi, westward over prairie and desert, still westward over the Rocky Mountains and the Sierras, until, like the swelling tide that fills the shore, it has covered the continent from sea to sea with the resistless flow of population, making complete the chain of civilization which shall bind in one common brotherhood all the nations of the world. It is an impressive thought that after many

centuries civilization, which began in Asia and swept westward over Europe and the Atlantic, has now crossed the Western hemisphere, and from the shores of California and Oregon looks across the Pacific to Asia, where it had its birth. It is this march which Lord Rosebery predicts will eventually result in the sublime transference of political power and the seat of empire from the Eastern to the Western hemisphere.

Every nation has been born in struggle and nursed in blood and battle. This great nation was born in the civil and religious struggles of Europe. It was baptized in the blood of our patriot ancestors, shed to secure our freedom; it was cleansed of the foul stain of human slavery in that other torrent of blood which for four sorrowful years flowed from wounds fraternally inflicted. It was sanctified by the war for Cuban independence, when the armed hand of the nation was stretched out to protect a brave and patient people perishing under the cruel tyranny of Spain. And we may reverently say that God approved that decision and gave our country expanding territory and her proper rank among the nations of the earth. I am reminded of the words of Lowell:

"Once to every man and nation comes the moment to decide,
In the strife of Truth with Falsehood, for good or evil side;
Some great cause, God's new Messiah, offering each the bloom or blight,
Parts the goats upon the left hand, and the sheep upon the right,
And the choice goes by forever 'twixt that darkness and that light."

The present standing of America is secure. But what of the remote future? Will the fate of ancient nations be our own? In the coming centuries shall we sink into insignificance, or into an oblivion which will leave nothing but a memory of our passing grandeur? Will the generations of a new and later civilization look upon the ruins of our capitol and cathedrals, covered with the dust of ages, as we look upon the temples and palaces of Babylon and Nineveh, or the columns and arches of the Roman Forum, or the Parthenon, beautiful in its decay, crowning the Acropolis? In cheerful optimism I answer, No.

On the contrary, I believe that we are building a great spiritual university and temple of freedom, a university in which mankind will learn the fundamental principles of justice and of civil and religious

liberty; a temple of such catholicity that all men will gather in its broad aisles and bow before its altars to learn obedience to the law of the one living and true God; that both university and temple will be so majestic in proportions, so massive in construction that when our material structures shall have crumbled into dust they and their principles will endure; that the time is coming when there will be neither kingdom nor aristocracy, but governments founded only upon the consent of the governed, and based on civil and religious liberty and the law of God, and finally, that our nation will resist time and survive decay, so long and only so long as a pure and independent Bench and a fearless and patriotic Bar remain to defend our liberties; so long as the nation sacredly cherishes the great principles of freedom and equal rights to all its citizens; so long as it fears God and obeys his commands; so long as it establishes and maintains just and righteous laws, and so long as it deals justly with other nations and regards all men as brothers, children of one Father, even the Lord God Almighty.

Historical and Patriotic Addresses, CENTENNIAL AND QUADRENNIAL. Upwards of one hundred select orations, delivered in every State of the Union on the 100th anniversary of American Independence, by Hon. Wm. M. Evarts, Rev. Dr. Storrs, H. W. Beecher, Chas. Francis Adams, Robert C. Winthrop, Horatio Seymour, Geo. Wm. Curtis, Chauncey M. Depew, and others,—issued under the auspices of the respective authors. An authorized and enduring monument of that memorable epoch of battles and their anniversaries from Bunker Hill to Yorktown, including the most noted Columbian Addresses of 1892-93. Edited by F. Saunders, A.M., Lib'n of Astor Library. 1048 octavo pages. Cloth, \$3.50.

Makers of the American Republic. By REV. DAVID GREGG, D.D. Historical Lectures of the Early Colonists, the Virginians, Pilgrims, Puritans, Hollanders, Huguenots, Quakers, Scotch and other founders, setting forth in a vivid light, the races, personalities, principles, and occasions, as factors that entered into the development of the nation. 12mo, 406 pp. Gilt top, uncut edges, \$1.75. Cloth, \$1.50.

Patriotic and Secular, *Thoughts for the Occasion*, Historical Data, Facts and Best Thoughts, for the Fourteen Holidays of the calendar year, for the Home, School and Library. 578 pp., 12mo, \$1.75.

HON. CHAUNCEY M. DEPEW writes: "Your book happily meets a want frequently felt by speakers who are called upon to address an audience upon all sorts of occasions and have little time to look up the literature bearing upon the subject."

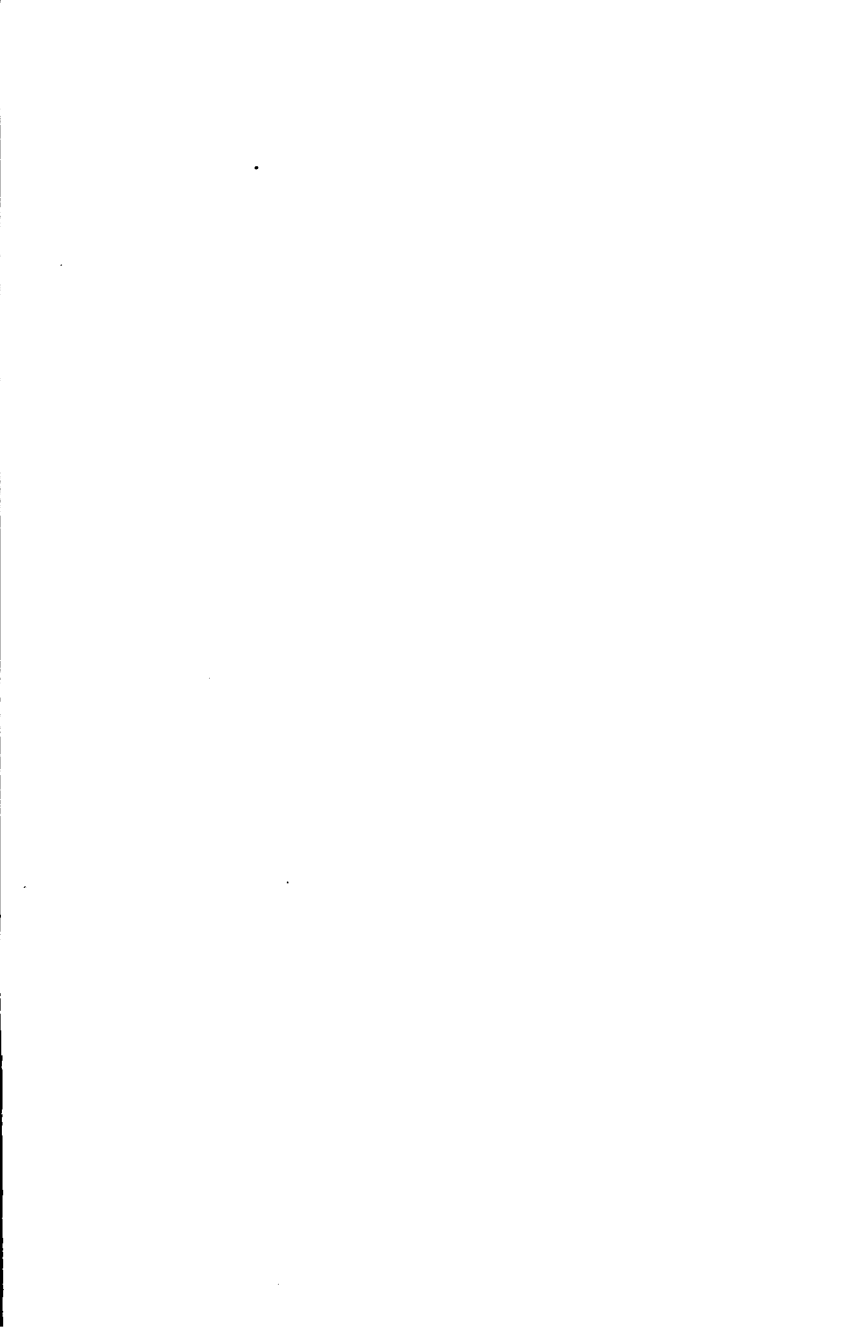
Anniversary and Religious (*A Companion Volume*). Historical Outlines and Beautiful Thoughts, for the thirteen Timely Occasions of our Church year. F. Noble, D. D., Editor. 516 pp., 12mo, \$1.75.

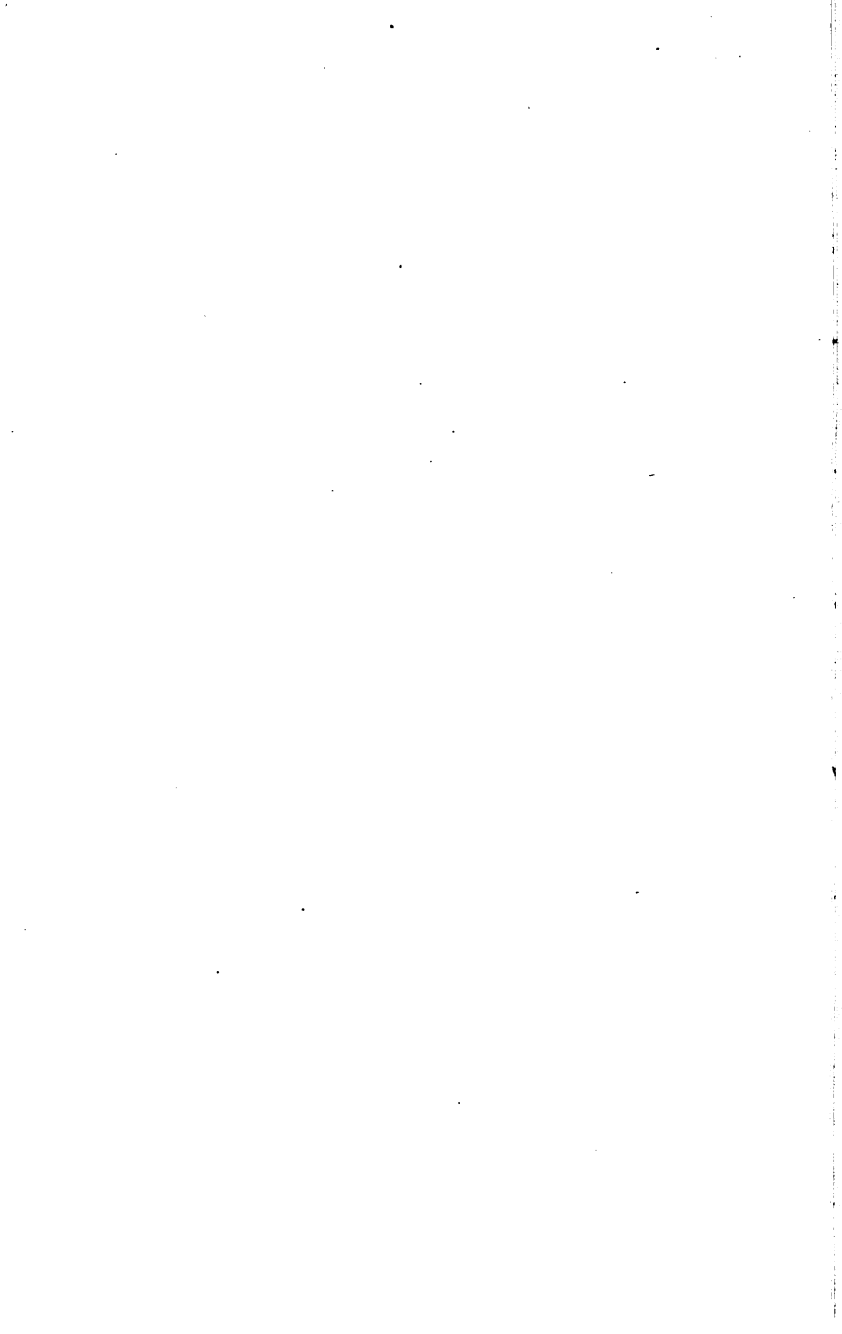
"Public men, preachers, members of leagues, and associations, pupils in schools, everybody who has occasion to make an address, or write in recognition of any of our anniversaries, will be grateful for a work that supplies them with facts and figures from the best sources relating to the day to be celebrated."—*Christian Advocate*.

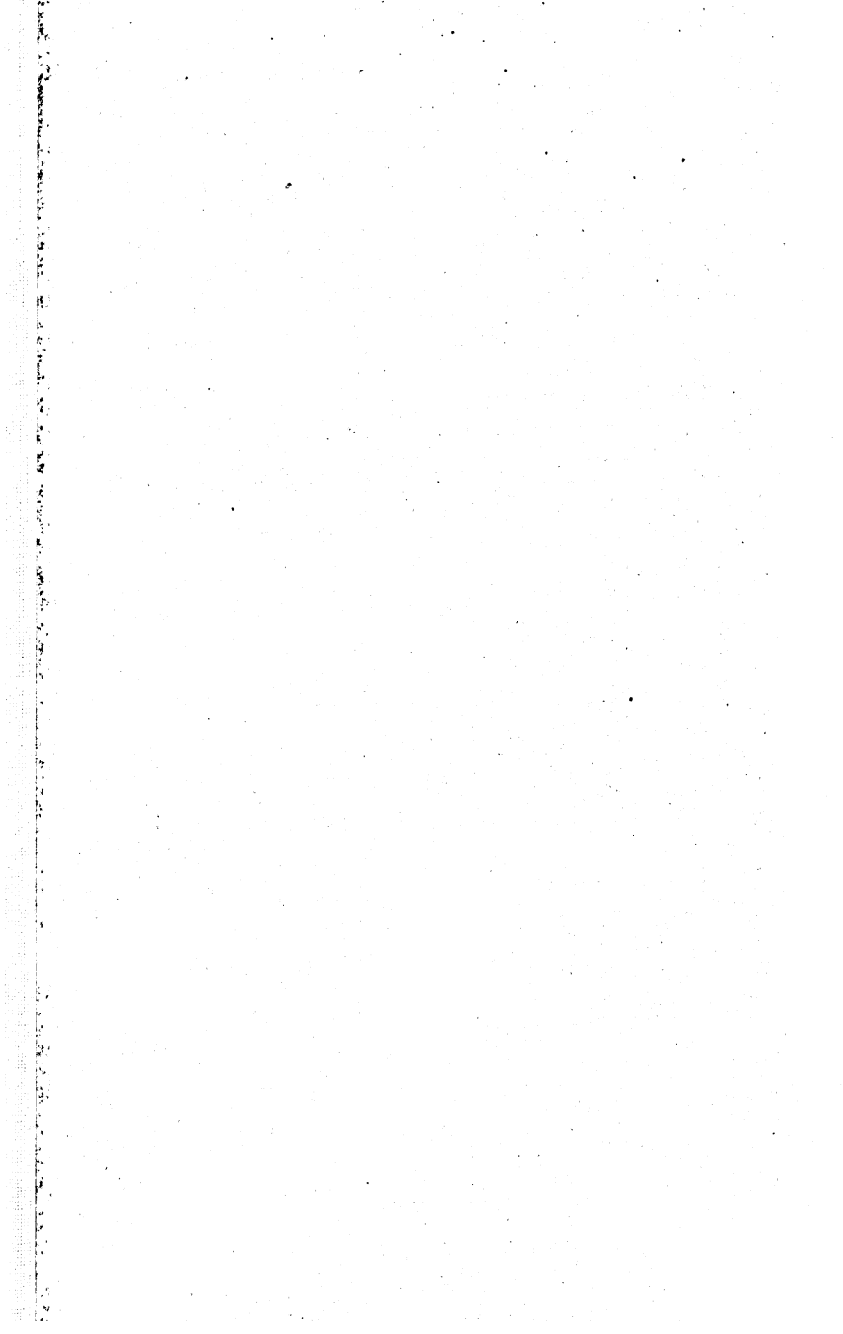
The Bench and Bar, as *Makers of the American Republic*. A Forefathers' Day Address, celebrating the 280th anniversary of the landing of the Pilgrims. By HON. W. W. GOODRICH, Presiding Justice Supreme Court, Appellate Division, State of New York. 66 pages. With portraits. Boards, 50 cents.

E. B. TREAT & CO., Publishers, New York.

7









AUG 5 1935

